

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA

- v. -

JONATHAN ROPER,

Defendant.  
----- X

: **SEALED SUPERSEDING**  
: **INFORMATION**

: S3 16 Cr. 542 (WHP)

**COUNT ONE**

**(Conspiracy to Violate the Anti-Kickback Statute)**

The United States Attorney charges:

1. From at least in or about March 2013 up to and including in or about December 2015, in the Southern District of New York and elsewhere, JONATHAN ROPER, the defendant, and others known and unknown, willfully and knowingly combined, conspired, confederated, and agreed together and with each other to commit an offense against the United States, to wit, to violate Title 42, United States Code, Section 1320a-7b(b)(2)(B).

2. It was a part and object of the conspiracy that JONATHAN ROPER, the defendant, and others known and unknown, willfully and knowingly would and did offer and pay remuneration (including kickbacks, bribes, and rebates), directly and indirectly, overtly and covertly, in cash and in kind, to a person to induce such person to purchase, lease, order, and arrange for and recommend purchasing, leasing, and ordering a

good, facility, service, and item for which payment may be made in whole and in part under a Federal health care program, to wit a fentanyl-based sublingual spray (the "Fentanyl Spray") manufactured by a publicly traded pharmaceutical company based in Arizona ("Pharma Company-1"), in violation of Title 42, United States Code, Section 1320a-7b(b)(2)(B).

Overt Acts

3. In furtherance of this conspiracy, and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about November 14, 2013, JONATHAN ROPER, the defendant, in his capacity as a District Sales Manager for Pharma Company-1, sent an email to other Pharma Company-1 employees, including the sales representatives that ROPER supervised, stating, in substance and in part:

[T]he lack of new RXs is going to bury us and nothing has changed. Unfortunately for many reps, it's going to to [sic] be a sad holiday season and it's out of my control at this point. DONT BE ONE OF THOSE REPS! Almost all of you have speakers, use that to your advantage and repeatedly inform them of one simple guideline for them to follow as [Pharma Company-1] speakers, NO SCRIPTS, NO PROGRAMS. It is a complete waste of time and resources to utilize speakers with no clinical experience.

b. On or about February 20, 2014, ROPER, in his capacity as a District Sales Manager for Pharma Company-1, sent

an email to other Pharma Company-1 employees, including the sales representatives that ROPER supervised, stating, in substance and in part:

NYC,

Everyone on this team has stepped it up the past week or so. I am extremely proud and optimistic at the movement that has been going on. We MUST keep pushing as hard as we can to get every SSP [Specialty Sales Professional] apart of this team on the board daily! NOW is the time to attain as many RXs as possible going into the NSM [National Sales Meeting]. NYC needs to go into this meeting on fire, and show our entire company that we belong in the top 3 nationally, and aren't just carried by one or two reps.

One week until [National Sales Meeting], and I need everyone on this team to work their relationships. Ask each of your top prescribers to do whatever they can to make you look like an absolute superstar for the next week, especially while we are [at the National Sales Meeting]. This is what reps work all year for, do not be hesitant in asking your docs to give you the business in which you are owed, deserve, and will help in making you shine at [the National Sales Meeting]. Show everyone at [Pharma Company-1] that your time has been well spent and the formula has been followed. All of the breakfasts, lunches, ISPs [Pharma Company-1 Speaker Programs], and top customer service to go along with helping provide your docs pts with the best ROO [Rapid-Onset Opioid] product in its class for treating BTCP [breakthrough cancer pain]. This has to be reciprocated to you for all of your hard work! If you have a relationship, asking this of your docs should be one of the easiest things you do as an SSP. You all have claimed to have relationships so this should not be a problem. If you feel that you cannot complete this simple task with the most positive results, then there is no point in attending [the National Sales Meeting].

. . . .

Thanks in advance for all of your efforts, and I ask all of you to please ENSURE that we have the best week of sales we have ever had as a team. The time is now!!

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c. On or about March 28, 2014, ROPER, in his capacity as a District Sales Manager for Pharma Company-1, sent an email to other Pharma Company-1 employees, including the sales representatives that ROPER supervised, stating, in substance and in part:

NYC,

Good luck today, biggest Friday of the quarter is here!! Still 4 days including today to get RXs filled, put more \$\$ in your pockets and for those of you who haven't met your baseline as of yet, there's still time left! You have all heard it before, LIVE WITH YOUR TOP DOCS, and even more importantly ASK for their business.

We all benefit from having the best ROO [Rapid-Onset Opiod] in its class, that being said, there is no excuse for any of your docs to not take care of you at this crucial time of the quarter. For the first time as a company, we are facing the challenge of meeting our quarterly goal. That being said, its time for all of your your [sic] top prescribers (esp. SPEAKERS) to give back for all of the hard work, long days and late nights you have spoiled them with. Keep pushing as hard as you all possibly can and remember why today is especially most important being that it will set you up for a few hopeful RXs sat/sun and a HUGE Monday!!!

d. On or about May 6, 2014, ROPER, in his capacity as a District Sales Manager for Pharma Company-1, sent an email to other Pharma Company-1 employees, including the

sales representatives that ROPER supervised, stating, in substance and in part:

Where is the ROI [Return on Investment]??!!! All prescribers from this team that are on this list are [Pharma Company-1] speakers. We invest a lot of time, \$, blood, sweat, and tears on "our guys" and help spreading the word on treating BTCP [breakthrough cancer pain]. We hire only the best of the best to be apart [sic] of our speaker bureau and dropping script counts is what we get in return? As a team we are lagging behind once again and once again not on pace to meet our quarterly goal. Time for your main guys to step it up and give you the ROI you deserve.

The most common question asked at the conclusion of a speaker program is alway [sic], "doc, how many pts [patients] do you currently have on [the Fentanyl Spray]?" Lets not even discuss what some of these prescribers answers may be but I will tell you right now, not enough!

This is a slap in the face to all of you and is a good indication as to why NONE of you are climbing in the rankings this quarter. DO NOT be afraid to set your expectations and make them crystal clear as to what they are before, during, and after HIRING these privileged [sic] set of docs who are fortunate enough to be a part of the best speaker bureau in the market in the world of BTCP [breakthrough cancer pain]. Please handle this immediately as funding will not be given out to anymore "let downs" in the future. Thanks.

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e. On or about January 28, 2015, ROPER, in his capacity as a District Sales Manager for Pharma Company-1, sent an email to other Pharma Company-1 employees, including the sales representatives that ROPER supervised, stating, in substance and in part:

The first month of Q1 is pretty much over and NONE of you are on pace to hit your baselines and/or growing them. (Check your net sales report and do the math)

All of you have speakers so this should not be an issue. If they are not giving their full support and business to you, I have NO PROBLEM getting rid of them and replacing with another speaker who truly supports our drug and helping pts suffering from BTCP [breakthrough cancer pain].

Its time to get back on track, follow the formula, and keep pushing for #1.  
THIS HAS TO START NOW!!

Thanks for the hard work!!

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(Title 18, United States Code, Section 371.)

**COUNT TWO**  
**(Violation of the Anti-Kickback Statute)**

The United States Attorney further charges:

4. From at least in or about March 2013 up to and including in or about December 2015, in the Southern District of New York and elsewhere, JONATHAN ROPER, the defendant, willfully and knowingly offered and paid remuneration (including kickbacks, bribes, and rebates), directly and indirectly, overtly and covertly, in cash and in kind, to a person to induce such person to purchase, lease, order, and arrange for and recommend purchasing, leasing, and ordering a good, facility, service, and item for which payment may be made in whole and in

part under a Federal health care program, to wit the Fentanyl Spray manufactured by Pharma Company-1.

(Title 42, United States Code, Section 1320a-7b(b)(2)(B), and Title 18, United States Code, Section 2.)

**COUNT THREE**  
**(Violation of the Health Information Portability and Accountability Act)**

The United States Attorney further charges:

5. From at least in or about March 2013 up to and including in or about December 2015, in the Southern District of New York and elsewhere, JONATHAN ROPER, the defendant, knowingly and without authorization obtained protected individually identifiable health information relating to an individual that was maintained by a covered entity, as defined in 45 C.F.R. § 160.103, to wit, ROPER, while employed by Pharma Company-1, accessed patient records containing protected individually identifiable health information originating from the offices of a health care provider without authorization from the patient.

(Title 42, United States Code, Section 1320d-6(a)(2) and (b)(1).)

**COUNT FOUR**  
**(Conspiracy to Commit Honest Services Wire Fraud)**

The United States Attorney further charges:

6. From at least in or about March 2013, up to and including in or about December 2015, in the Southern District of New York and elsewhere, JONATHAN ROPER, the defendant, and

others known and unknown, willfully and knowingly combined, conspired, confederated, and agreed together and with each other to violate Title 18, United States Code, Sections 1343 and 1346.

7. It was a part and object of the conspiracy that JONATHAN ROPER, the defendant, and others known and unknown, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and to deprive patients of their intangible rights to their doctors' honest services, would and did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Sections 1343 and 1346, to wit, ROPER, while employed at Pharma Company-1, participated in a scheme to pay bribes and kickbacks to doctors, including Pharma Company-1 Speaker Program fees, in order to induce these doctors to prescribe the Fentanyl Spray, thereby depriving their patients of their intangible rights to their doctors' honest services.

(Title 18, United States Code, Section 1349.)

**COUNT FIVE**  
**(Aggravated Identity Theft)**

The United States Attorney further charges:

8. From at least in or about March 2013, up to and including in or about December 2015, in the Southern District of



New York and elsewhere, JONATHAN ROPER, the defendant, knowingly transferred, possessed, and used, without lawful authority, a means of identification of another person, during and in relation to a felony violation enumerated in Title 18, United States Code, Section 1028A(c), to wit, without authorization, ROPER used, and aided and abetted the use of, the names, signatures, National Provider Identifier numbers, and state license numbers of doctors and pharmacists on sign-in sheets for Speaker Programs during and in relation to the felony violation charged in Count Four of this Information.

(Title 18, United States Code, Sections 1028A(a)(1),  
1028A(c)(5), and 2.)

**FORFEITURE ALLEGATION AS TO COUNTS ONE and TWO**

9. As a result of committing the offenses charged in Counts One and Two of this Information, JONATHAN ROPER, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7), any and all property, real and personal, that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of the offenses charged in Counts One and Two of this Information, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses.

**FORFEITURE ALLEGATION AS TO COUNT FOUR**

10. As a result of committing the offense charged in Count Four of this Information, JONATHAN ROPER, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), any and all property, real and personal, which constitutes, or is derived from, proceeds traceable to the commission of said offense, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offense.

**Substitute Asset Provision**

11. If any of the above-described forfeitable property, as a result of any act or omission of JONATHAN ROPER, the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;


c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value;  
or

e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Sections 981 and 982;  
Title 21, United States Code, Section 853(p); and  
Title 28, United States Code, Section 2461.)

  
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JOON H. KIM  
Acting United States Attorney  
Southern District of New York /pink

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(18 U.S.C. §§ 371, 1028A(a)(1),  
1028A(c)(5), 1349 and 2; 42 U.S.C. §§  
1320a-7b(b)(2)(B), and 1320d-6(a)(2).)

JOON H. KIM

Acting United States Attorney.

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